



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2
Caribbean Environmental Protection Division
City View Plaza II, #48 State Road 165, Suite 7000
Guaynabo, Puerto Rico 00968-8073

111618

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Carlos Rodríguez Camacho
President
CALRINCON Corp.
P. O. Box 556
Rincón, Puerto Rico 00677

**Re: Request for Information Pursuant to Section 308 of the Clean Water Act
Earth Movement Activities at Parcel of Land located in Rincón, Puerto Rico
CEPD-CWA-02-IR-2019-001**

Dear Mr. Rodríguez Camacho:

On October 4, 2018, the United States Environmental Protection Agency (EPA) performed a National Pollutant Discharge Elimination System (NPDES) Stormwater Reconnaissance Inspection (Inspection) at a Parcel of Land (Site) owned by CALRINCON Corp. (CALRINCON). The Site is located at PR-413 Road, Km. 1, Rincón, Puerto Rico. By letter dated November 8, 2018, EPA sent to CALRINCON a copy of the Inspection Report and Memorandum.¹

Based on the findings of the Inspection, and EPA's review of the documents and information provided by Karimar Construction, Inc. (Karimar) and CALRINCON, CALRINCON authorized Karimar to conduct earth movement activities (i.e. land clearing, grubbing and grading) at the Site. Please be informed that earth movement activities at the Site may be subject to Sections 301(a) and 402(p) of the Clean Water Act (CWA), 33 U.S.C. §§ 1311(a), and 1342(p), and its implementing NPDES permit regulations pursuant to 40 C.F.R. § 122.26.

Section 301(a) of the CWA provides in part that except as in compliance with Section 402 of the CWA, the discharge of any pollutant by any person shall be unlawful. EPA promulgated NPDES regulations defining the terms construction activity and storm water discharge associated with small construction activity. Those regulations are codified 40 C.F.R. §§ 122.26(b)(14)(x)² and 122.26(b)(15)³, respectively.

¹ A Memorandum correcting a typographical error in the Inspection Report was signed on November 11, 2018.

² Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

³ Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

Request for Information

Section 308(a) of the CWA provides that whenever it is necessary to carry out the objectives of the CWA, including determining whether a person⁴ is in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311, EPA shall require the submission of any information reasonably necessary to make such a determination. Under the authority of Section 308 of the CWA, EPA may require the submission of information necessary to determine if the earth movement activities that were conducted at the Site are subject to Sections 301(a) and 402(p) of the CWA, and whether CALRINCON and/or any other person(s) complied with such sections of the CWA.

EPA is hereby requesting CALRINCON to provide information pursuant to the authority vested in the Administrator of EPA by Section 308(a) of the CWA. This authority has been duly delegated to the Regional Administrator of Region 2, EPA, and since further re-delegated to the Director, Caribbean Environmental Protection Division.

Instructions for Responding to this Request for Information (RFI)

In responding to this RFI, CALRINCON shall apply the following instructions, definitions and information:

- a. The person that responds to this RFI shall meet the signatory requirements for a corporation in 40 C.F.R. § 122.22.
- b. A complete separate response must be made to each individual question in this RFI. CALRINCON shall identify each answer with the number of the question to which it is addressed and precede each answer with the question to which it is addressed.
- c. CALRINCON shall interpret "and" as well as "or" to include within the scope of the question, as much information as possible. If two interpretations of a question are possible, use the one that provides more information.
- d. In preparing the response to each question, CALRINCON should seek out responsive information from the current and former owners and/or operators, employees, agents and/or sub-contractors whom CALRINCON has reason to believe may be familiar with the matter to which the question pertains, regardless of whether the source is in CALRINCON's immediate possession.
- e. For each question, CALRINCON shall identify all the persons and provide all the documents that it relied on in producing its answer.
- f. If CALRINCON is unable to answer a question in a detailed and complete manner or if CALRINCON is unable to provide any of the information or documents requested, CALRINCON shall indicate the reason for its inability to do so.

⁴ Section 502(5) of the CWA, 33 U.S.C. § 1362(5) defines the term "person" as an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

- g. If CALRINCON has reason to believe that there is an individual who may be able to provide more detail or documentation in response to any question, state that person's name and last known address and phone number and the reasons for the belief.
- h. If anything is deleted from a document produced in response to this RFI, CALRINCON shall state the reason for and the subject matter of the deletion.
- i. For each document produced in response to this RFI, CALRINCON shall indicate on the document or in some other reasonable manner, the number of the question to which it applies. If a document is requested but is not available, CALRINCON shall state the reason for its unavailability.
- j. Earth movement activity shall be interpreted as clearing, grading and/or excavation.
- k. CALRINCON may use maps, drawings, photographs, or other means to describe the information being described and/or provided.

Documents and Information Requested

CALRINCON shall provide the following information and documents to EPA pursuant to Section 308(a) of the CWA:

Background Information on Business Entities

- 1. Describe the business relationship, if any, between CALRINCON and Karimar Construction Inc. (Karimar) concerning the Site.
- 2. Describe all contracts and/or agreements, including verbal agreements, between CALRINCON Corp. and Karimar related to earth movement activities at the Site for the last five (5) years. Provide copy of such contracts and/or agreements.
- 3. Describe the business relationship between CALRINCON and Puerto Bahía, Inc. for the last five (5) years.
- 4. Describe all contracts and/or agreements, including verbal agreements, between CALRINCON and Puerto Bahía, Inc. for the last five (5) years. Provide copy of such contracts and/or agreements.
- 5. Provide a legible copy of any land surveys, soil studies, and hydrologic/hydraulic studies that had been prepared for the Site for the last five (5) years.

Information about Construction Activities at the Site in Support to the Puerto Bahía Residential Project

- 6. Describe the pre-existing conditions of the Site, including but not limited to the topography, type of soils, vegetative coverage, and stormwater runoff, prior to the commencement of any construction and earth movement activities at the Site.
- 7. Provide the dates and times in which earth movement and construction activities were conducted at the Site in support of construction activities at the Puerto Bahía Residential Project.

8. Indicate the access locations (e.g. Road PR-413, Puerto Bahía Residential Project) that Karimar used to access the Site to perform construction activities at the Site in support to its construction activities at the Puerto Bahía Residential Project.
9. Describe and provide the dates in which construction activities (e.g., equipment/material staging area, construction of reinforced concrete wall along Puerto Bahía Residential Project perimeter, installation of manholes and storm sewer pipes) were performed at the Site.

Information about Clearing and Grubbing at the Site

10. Indicate the dates and times in which clearing and/or grubbing was performed at the Site during the last five (5) years. Indicate who performed such clearing and grubbing activities, and provide the contact information.
11. Provide the total land area in which clearing and/or grubbing was performed at the Site for the last (5) years. Indicate the area in a map or aerial photograph.
12. Provide a copy of any report or drawings associated to land surveying of the Site for the last (5) years.

Information about Grading at the Site

13. Provide a detailed explanation of the purpose for depositing soil material at the Site.
14. Indicate the prior use and source of the soil material deposited at the Site.
15. Describe the soil characteristics of the soil material deposited at the Site.
16. Indicate the number of cubic yards of the soil material deposited at the Site.
17. Indicate the date and time when the deposit of soil material began at the Site.
18. Identify all the persons and/or entities that deposited soil material at the Site for the last five (5) years.
19. Indicate whether soil compaction of the deposited soil material was conducted at the Site.
20. Indicate the date and time that the deposit of soil material ceased at the Site.

Information about Erosion and Sediment Controls and Soil Stabilization at the Site

21. Describe the erosion and sediment controls and soil stabilization practices that were applied to those areas in which clearing, grubbing and grading were conducted at the Site. Provide the dates when these erosion and sediment controls and soil stabilization practices were applied.
22. Provide a copy of any written plans and drawings developed concerning erosion and sediment controls and soil stabilization practices for the Site.

Information about Stormwater Collection, Management and Conveyance

23. Describe the stormwater collection, management and conveyances system used in those areas in which clearing, grubbing and grading were conducted at the Site.
24. Provide a copy of any written plans and drawings that were developed concerning stormwater collection, management and conveyances practices for the Site.
25. Provide any photograph in your possession showing the construction activities and earth movement activities conducted at the Site. These photographs may include any aerial photographs.
26. Indicate whether earth movement and construction activities were ever suspended or ceased at the Site due to rain precipitation. Provide the dates.
27. Submit a list of all sites one (1) acre or greater owned or operated by CALRINCON that are either under construction, have not undergone final stabilization, or that are under contract for construction. The response list and information must include:
 - a. site name and location;
 - b. area of the Site;
 - c. name, telephone and email of person who is responsible for clearing, grading and/or excavating; and
 - d. date the construction began or is scheduled to begin and the date that construction is expected to be completed.

Time and Delivery of Documents and Information

The response to this RFI shall be postmarked or received at EPA within fifteen (15) calendar days of receipt of this letter, and should be mailed to the following address:

José A. Rivera, BSCE
Team Leader
Clean Water Act Team
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II - Suite 7000
#48, PR-165, Km 1.2
Guaynabo, Puerto Rico 00968-8069

CALRINCON's response shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Failure to comply in all respects with this RFI within the time specified above may result in the initiation of an enforcement action under Section 309 of the Act, 33 U.S.C. §1319, under which injunctive relief and penalties may be sought. Such an enforcement action may include the assessment of penalties of up to \$53,484 per day for each day of continued non-compliance.

Please be advised that CALRINCON is under a continuing obligation to supplement the response if information not known or not available to CALRINCON as of the date of submission of its response should later become known or available to CALRINCON. In this instance, CALRINCON must supplement its response to EPA within five (5) business days.

If at any time in the future CALRINCON obtains or becomes aware of additional information or find that any portion of the submitted information is false, misleading or misrepresents the truth, CALRINCON must notify EPA of this fact immediately and provide a corrected response within five (5) business days. If any part of the response is found to be untrue, CALRINCON and/or its authorized representatives may be subject to criminal prosecution.

This Request for Information is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501-3520. CALRINCON may, if so desire, assert a business confidentiality claim covering all or part of the information requested by this letter. A business confidentiality claim may be asserted by placing on (or attaching to) the information, at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret" or "proprietary" or "company confidential." Information covered by such a claim will be disclosed by EPA only in accordance with and by means of procedures set forth in Sub-part B, 40 C.R. Part 2.

If no such claim accompanies the information contained in the response to the RFI when it is received by EPA, it may be made available to the public by EPA without further notice to CALRINCON. Please read the above-cited statutory and regulatory provisions carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by CALRINCON. If you desire confidential treatment of information only until a certain date or until the occurrence of a certain event, CALRINCON's response should state so.

If you have any questions concerning this request, please contact Mr. Rivera, Team Leader, Clean Water Act Team, at (787) 977-5842, or through email at rivera.jose@epa.gov.

Sincerely,



Carmen R. Guerrero-Pérez
Director
Caribbean Environmental Protection Division

cc: Ángel Meléndez, EQB (via e/mail)